

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN O'SHEA, et al.,

Plaintiffs,

v.

24 HOUR FITNESS USA, INC.,

Defendant.

Case No. [16-cv-01668-JSW](#)

**QUESTIONS FOR HEARING ON
MOTION FOR PRELIMINARY
APPROVAL**

Re: Dkt. No. 111

The Court has received Plaintiffs' motion for preliminary approval of the settlement reached in this case. There has been no opposition filed. The Court has questions for the parties in advance of that hearing. By no later than December 1, 2017, the parties shall submit a joint brief addressing the questions set forth herein and, if they agree to some of the Court's proposals, a modified form of notice and modified proposed order granting the motion for preliminary approval. If after reviewing the parties' answers, the Court finds the motion can be resolved on the papers, it will advise the parties in advance of the hearing date.

1. The parties shall provide the Court with more information about overall monetary value of the proposed settlement to the potential class members, including, but not limited to, those class members who may not submit the requested declaration and whose "annual renewal amount already increased." According to the Plaintiffs the latter group will "receive a reduction in their current annual renewal amount equal to ten percent (10%) of the increase." (*See* Mot. at 4:14-15; (Declaration of Rafey Balabanian, Ex. A, Joint Stipulation and Settlement Agreement, ¶ 1.35 (defining "Reduced Annual Renewal Amount").) The example provided in the settlement agreement suggests that discount could be \$10.00 and, thus, if that payment is fixed for three years, the value of the settlement to that class member appears to be \$30.00.

2. The parties propose requiring persons who file objections to the proposed settlement to, inter alia, include “a list of all other objections you submitted to any class action settlements in any court in the United States in the previous five years or, if you submitted no such objections, a statement that you have submitted no such objections to class action settlements in the United States in the past five years.” (Declaration of Rafey S. Balabanian, Ex. A, Joint Stipulation and Settlement Agreement, Ex. 2, Proposed Notice at p. 10.) The parties also agreed, as part of the settlement, that they could seek to obtain discovery from objectors but they do not include that possibility in their proposed notice. (Joint Stipulation and Settlement Agreement ¶ 6.7.)

a. Do the parties have any authority that supports requiring objectors to provide such information and to submit to discovery?

b. If the Court is willing to adopt the parties’ proposed language and requirements for objections, would the parties be willing to include a statement in the proposed notice that the parties have reserved the right to seek discovery from objectors and a brief explanation of what that might entail?

c. If the Court is not willing to adopt the level of details the parties have asked for from objectors, would the parties be willing to revise Section 18 of the proposed notice to conform in all respects with the suggested language in paragraph 5 of the Court’s Procedural Guidance for Class Action Settlements, Preliminary Approval?

2. The parties have proposed deadlines of 45 days after mailing of the Notice and Claim Form to Class members for the Court to receive objections and for class members to post-mark opt-out requests, but provide for sixty days to submit a claim form. Are the parties amenable to providing class members sixty (60) days to object or to opt-out?

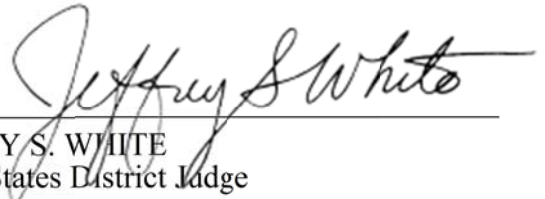
3. Are Plaintiffs amenable to filing their motion for attorneys’ fees and incentive awards 21 days before the deadline to opt-out or object and to filing a motion for final approval in accordance with the Northern District Civil Local Rules, *i.e.* 35 days before the Final Approval Hearing Date?

4. If the parties adopt the proposals set forth in this Order, when is the earliest date on

1 which a final approval hearing could be held? The parties are reminded that the Court holds its
2 law and motion calendar on Fridays at 9:00 a.m.

3 **IT IS SO ORDERED.**

4 Dated: November 22, 2017

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7 JEFFREY S. WHITE
8 United States District Judge
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